

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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SEP 30 1991

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
Amendment of Part 74 of)
the Commission's Rules)
and Regulations with)
Regard to the Low Power)
Television Service)

RM-7772

To: The Commission

REPLY COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. This proceeding has attracted a rare and overwhelming number of individual station licensees and permittees in support of a petition for rule making. Comments strongly supportive of the Community Broadcasters Association's ("CBA") Petition for Rule Making ("Petition") were filed by 34 licensees and permittees of low power television

by principals, not by attorneys.^{2/} They were not "canned" or drafted by CBA. Each commenter spoke from his or her own heart and had something individual to say about why a formal rule making should be initiated and the Petition should be granted. There can be no better demonstration of the need underlying the Petition, and no more persuasive showing of why the Commission should grant the LPTV industry the very limited relief it has requested.

3. The only oppositions came from trade associations whose members must feel terribly threatened by competition from locally programmed LPTV stations, considering the effort they put into opposing the Petition. It is unfortunate that the broadcasting "establishment" feels compelled to take such a negative attitude toward encouraging local over-the-air programming, which has been the bedrock of the American broadcasting system since its inception. As early as 1928,

4. The opponents could not attack the underlying premise of local community broadcasting with a straight face, so for the most part they leveled their guns at arguments CBA never made. The Commission must not be taken in by this approach. CBA cannot be made to ask for something it never asked for, just because opponents say so. CBA did not ask for any change in the secondary status of the LPTV service. Of course, no one likes being secondary; but neither do Class II AM broadcast stations like to receive interference from Class I stations at night, nor do daytime AM stations like to receive interference during pre-sunrise or post-sunset operating hours. But that is not the point. CBA did not ask for a change, so the issue of secondary status is simply not on the table.

5. Nor do LPTV operators want to impede the introduction of advanced television systems ("ATV") or cripple the American broadcasting or electronic industries so that they fall victim to foreign competition. LPTV operators have at least as much of a stake in the success and growth of these industries as any other broadcaster in this country, whether in the context of ATV or otherwise. As a secondary service, LPTV cannot prevent the allocation of channels for ATV stations. Moreover, LPTV also cannot proliferate to the point where it impedes ATV development as a practical, if not a legal, matter, because applications for new LPTV stations are frozen within 100 miles of the top 30 markets for the speci-

fic purpose of preserving ATV options. In other words, the issue of ATV is not on the table either.^{3/}

6. That is CBA's response to the Oppositions of the National Association of Broadcasters ("NAB"), Maximum Service Television, Inc. ("MSTV"), and the Association of Independent Television Stations ("INTV"). CBA's Petition must be read and judged on the merits of what it says, not what someone else says or what someone else thinks would make it easier to defeat the Petition.

7. The Opposition of the National Translator Association ("NTA") is more disturbing, as LPTV operators share much technology in common with translators and intend no harm to the translator industry. The basic fallacy underlying the NTA Opposition is that it appears to assume that "community television" status would be forced on some who do not want it. That is not the case. CBA has proposed a new status that would have to be applied for on an individual station basis. No one would ever have to apply. Therefore, NTA's concerns are misplaced. No translator would have to change its automatic code-keyed station identification system, because no translator would have to change its call sign; and CBA proposes no change in the rule that permits code-keyed station ID's. No translator would have to be called anything

^{3/} Nor is cable carriage at issue in this proceeding. Cable carriage is obviously of serious concern to LPTV operators, but it is being debated in MM Docket No. 90-4 and on Capitol Hill, not here. The cable issue should not be invoked as an excuse to slow action on RM-7772.

other than a "translator." It is also unrealistic to fear that community television stations would increase power in a way that would preclude the establishment of new television translators. In rural areas where translators are most likely to be built, there is no spectrum shortage.^{4/} In more congested markets, the ATV freeze already precludes the establishment of either new translators or new LPTV stations.^{5/} Therefore, preclusion of the establishment of new translators is most unlikely.

8. What this proceeding is about is that a significant number of community television stations want to grow up a little; and that is all, despite what any opponent may claim. They want regulatory albatrosses removed from their necks in the form of the name of a service that implies inferiority; a call sign format that the public and the

^{4/} In fact, since translators do not have to comply with all the "taboos" that govern conventional television channel allotments, spectrum in rural areas is unlikely ever to be exhausted. The mere elimination of the second- through fifth-adjacent channel mileage separation requirements means that any community that wants them can have at least a dozen translators, if not many more.

^{5/} NTA is also unrealistic in predicting enormous power increases for LPTV stations. It is one thing to say that the 1 kW transmitter power output limit is too low and prevents effective service to a station's community; it is quite another to anticipate enormous community television service areas that preclude new services. The whole point of the community television industry is the establishment of smaller stations that can survive economically where conventional stations cannot. CBA has not asked for the same power levels available to conventional TV stations, nor would economic factors indicate that operators would want to build in that manner even if they could.

advertising industry do not understand; and an artificial power limit that can be changed without in any way changing current interference standards.^{6/} There is no good reason to cripple these stations with governmental regulations that do not serve a necessary purpose. The Commission is seeking to remove unnecessary regulations from every other service, so why should LPTV not be included?

9. It is no answer to say that LPTV operators acquired their stations with full knowledge of their status, so they must live with it. Class A FM station operators bought 3 kW stations with knowledge of the 3 kW power limit; but that did not stop them from fighting for many years until they won a new C3 class and a new Class A6 kW power limit,^{7/} even though their 6 kW proposal, unlike CBA's, required extremely careful tailoring to avoid creating new interference. UHF television stations were built when the permissible noise figure in tuners in television receivers was 14 dB; but that did not stop them from fighting for, and winning, a reduction to 12 dB, even though their proposal, unlike CBA's, placed a new burden on another industry (the receiver industry). Land mobile operators fought their way

^{6/} The suggestion of opponents that this relief would not help community television stations in the market place is belied by the comments of 34 operators supporting CBA's Petition and the absence of any opposition from the community television industry.

^{7/} See MM Docket No. 88-375, 4 FCC Rcd. 2792 (1989) and 4 FCC Rcd. 6375 (1989).

into the UHF-TV spectrum at 470-512 MHz, even though their proposals for the future, unlike CBA's, prevent the establishment of new conventional TV stations in the top ten markets.^{8/} Everyone who has a problem asks for relief. Every industry matures; and when it does, re-evaluation of regulations is always appropriate.^{9/} LPTV is no different, and its needs are no less worthy of consideration than those of any other service.

10. LPTV stations do not have regulatory benefits or protections to help ensure their economic success. They have only one big thing going for them -- their service to their local audiences -- but that one thing is the most important thing that broadcasting is supposed to stand for. Those stations that provide local service are not asking for protection but are asking only for shackles to be removed. They are asking only for a better name, a more recognizable call sign, and a more realistic power level with no change in interference rules. These modest requests should be promptly granted.

11. "Today, broadcasters remain television's lifeline. Broadcasters ensure local coverage of news and public affairs....The industry must be afforded more opportunities

^{8/} See Order in GEN Docket 85-172, 52 FR 28346 (1987).

^{9/} Indeed, Chairman Sikes has indicated in public speeches that with the advent of increased competition in the broadcasting industry, a "top to bottom" review of all broadcast regulations is under consideration.

to adapt and compete..." These words were spoken by Chairman Sikes in an address to the International Radio and Television Society on September 19, 1991. While the Chairman was speaking in the context of competition between broadcasting and cable, his words are relevant in the context of CBA's Petition as well. The locally programmed LPTV stations that would benefit from CBA's petition are providing the local lifeline of which the Chairman spoke and are asking for changes that will give them a better opportunity to compete.^{10/}

12. CBA is not sure whether its opponents have forgotten the importance of local programming or are afraid of the competition it represents.^{11/} But the Commission has not forgotten, and has continued to emphasize, the importance of local service, even as it has approved new technologies


^{10/} NTA frowns on what appears to be a request for increased regulation when CBA says that community television stations would abide by rules applicable to conventional stations. No one, including LPTV stations, wants more regulation as a general matter. However, it is hardly reasonable for community television stations to seek the benefits of an improved status without agreeing to play by all the relevant rules.

^{11/} A study of 217 conventional television stations in 50 markets showed that between 1979 and 1989, there was a 51 percent decrease in the average percentage of issued-oriented public affairs programming between 6:00 a.m. and 12:00 midnight. Some 40 percent of Fox network affiliates presented no public affairs program at any time during a selected "composite week," and 87 percent had no newscast. Almost one-third of CBS, NBC, and ABC affiliates had no local public affairs program. "Shortchanging the Viewers," white paper by Jim Donahue, Essential Information (1989).

for nationwide service.^{12/} The petitioners now before the Commission are asking for simple regulatory relief -- on a completely voluntary basis -- for a group of stations that provide local service and are willing to earn the relief they request. Therefore, CBA's Petition should be granted and a rule making begun at an early date.

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September 30, 1991

^{12/} See National Association of Broadcasters v. FCC, 740 F. 2d 1190 (D.C. Cir. 1984) (affirming Direct Broadcast Satellite rules).

CERTIFICATE OF SERVICE

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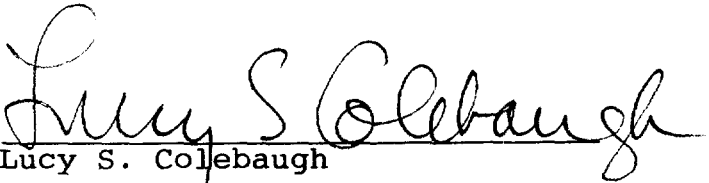
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